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29 October 1986  
OCA 86-3635

MEMORANDUM FOR

Executive Assistant to the DCI

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VIA:

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FROM:

SUBJECT: Legislative Program Supplement

REFERENCE: Memo to the Director, from Gries, same subject

1. We have discussed the items contained in the supplement to the legislative program with DoD, DoJ and NASA. Their comments are as follows:

a. Clarification of Security Authorities: The DoJ has stated that this proposal will receive a cool reception when it formally reaches the Department. We are told that the Civil Division of Justice does not believe the proposal will reduce the litigation burden on the Agency or strengthen the DCI's hand in the personnel security area because most of the litigation in this area involves constitutional claims, and the proposal would only remove court jurisdiction with respect to claims based on violation of federal statute.

b. Enhancing the Value of Security Questionnaires: This proposal will also receive a cool reception at Justice. We are informed that Civil Division of Justice does not believe that the civil penalties proposed will be anymore enforceable than existing criminal sanctions. We anticipate that the Department will weigh in with its objections at the time the proposal is submitted as legislation.

c. Protection of Technical Data with Space Application: Contrary to what we were told by [redacted] NASA has stated that they support this proposal and will include it in their legislative program and the NASA Authorization Bill. Including the proposal in the Intelligence Community program is therefore not absolutely necessary to ensure that it receives Administration support.

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d. Tort Reform: The DoJ agrees with our position that they should take the lead in obtaining government-wide relief, rather than the DCI.

e. Sanctions for Espionage: The DoJ agrees that they should take the lead in proposing an omnibus death penalty law that covers a variety of crimes, including espionage.

f. DoD use of the Polygraph for Counterintelligence Purposes: DoD would not favor inclusion of this item in the Program, most especially under the condition that it would take the lead in the matter. DoD supports the substance of the proposal, which would provide permanent authority for the DoD polygraph program (thereby eliminating the numerical caps on the numbers of polygraphs done annually and the necessity to return each year to Congress for reauthorization of the program). However, DoD believes that it will be forced by Congress to accept one more year of the current "year-to-year" authority. Because of this, DoD will not, in 1987, request permanent authority. Thus, DoD would not feel comfortable with a statement by the DCI that he would propose/support legislation giving DoD permanent authority, particularly if the intent behind that statement is to have DoD take the lead on the issue.

2. From the comments we received from other agencies, it is clear that almost all the items in the supplemental legislative program are controversial and will be opposed by certain elements within the Administration notwithstanding the fact that the President will approve these proposals when he signs the Presidential Report on Counterintelligence and Security.

3. Finally, [redacted] informs us that the White House has requested that the summary to the Presidential Report be re-written by the NSC staff. Thus, it does not look like the report will be approved anytime soon.

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